

LR2-602 . Settlement facilitation program.

A. **Scope.** The court may, pursuant to Rule [1-016](#) NMRA, refer cases to settlement conferences conducted by court-appointed settlement facilitators on an ad hoc basis throughout the year and during periodic "settlement weeks" scheduled by the court. The court will generally hold a "settlement week" during September every year.

B. **Application.** This rule applies to civil cases, whether jury or non-jury, except for cases within the following categories:

Appeals

Extraordinary writs

Court-annexed arbitration program, pending cases

Adoption

Commitment

Conservatorship

Guardianship

Student Loan

Election

Tax

This rule does not apply to disputes where a law suit has not yet been filed.

C. **Referral upon request.** Any party at any time may request referral to a settlement conference by motion or letter directed to the assigned judge. The letter may be ex parte. The letter should include the following:

- (1) Case number and caption;
- (2) Estimated time required for conference;
- (3) Whether other parties know request is being made;
- (4) Whether other parties agree conference is appropriate;
- (5) Brief list of pending issues;

(6) Type of facilitator or facilitator team preferred, e.g., judge, attorney, psychologist or other professional, judge/attorney, judge/psychologist, attorney/psychologist, attorney/attorney; and

(7) Names of all parties entitled to notice and any other persons who should be present at the conference, along with law firm, address, telephone number and capacity, e.g., attorney for petitioner, witness for respondent.

The assigned judge will determine whether to grant the request for referral. The assigned judge may refuse to grant a request even if all parties agree to a settlement conference.

D. **Referral upon judge's own motion.** The assigned judge at any time and without agreement of the parties may refer a case to a settlement conference.

E. **Referral order.** In all cases to be referred, whether upon party's request or judge's motion, the court will complete and file an order requiring a settlement conference, appointing a settlement facilitator or facilitators, and setting a deadline for the conference, and will mail or deliver endorsed copies to the facilitator(s) and all parties entitled to notice. The order shall not indicate whether the referral was made upon a party's request or the judge's motion. The order may be modified only by subsequent written court

order.

F. **Time, place and deadline for settlement conference.** Unless set by the referral order, the time(s) and place(s) of the settlement conference shall be set by the settlement facilitator(s) within a deadline set by the court. Any party or facilitator may request an extension of the deadline by motion directed to the assigned judge.

G. **Attendance.** The following shall attend and be present in person during the entire conference: each party of record including parties represented by counsel; each counsel of record who will be trying the case; and, for each party, the person or persons with complete authority to settle the case including but not limited to insurance company representatives and guardians ad litem. This provision may be waived only by written order of the assigned judge. The court may refuse to grant a motion to waive attendance even if all parties agree to the motion. Upon motion of any party or its own motion, the court shall impose sanctions for failure to attend the settlement conference or have present all necessary parties or their representatives with settlement authority, except upon a showing of good cause.

H. **Settlement conference information.** At least five (5) days prior to the conference, all parties shall provide the facilitator(s) with the information listed below. This information shall not be filed with the court nor in any way be made part of the court record, and at the providing party's discretion, need not be produced to other parties. Upon motion of any party or its own motion, the court may impose sanctions for failure to provide the information to the facilitator(s).

- (1) Case number and caption;
- (2) Brief description of the case; in domestic relations cases include date of marriage, separation and divorce, names, ages, occupations and current annual incomes of parties, and names and ages of children;
- (3) Description of the relief sought;
- (4) List of pending factual issues;
- (5) List of pending legal issues;
- (6) List of all remaining discovery;
- (7) List of any pending dispositive motions;
- (8) Estimate of costs and attorney fees through trial;
- (9) The last offer made to other parties; and
- (10) Copies of case law, statutes, pleadings, exhibits, orders and any other information which would be helpful to the facilitator(s).

I. **Good faith participation.** Parties shall participate in good faith in settlement conferences. Good faith participation includes but is not limited to sufficiently preparing for the conference and engaging in meaningful negotiations during the conference. Upon motion of any party or its own motion, the court may award attorney fees and costs for failure to participate in good faith.

J. **Cancelling conferences.** Settlement conferences may be cancelled only by written court order. By motion, any party may request that a settlement conference be cancelled. By letter to the assigned judge, the facilitator may request that a conference be cancelled.

K. **Choice of settlement facilitator.** The court will choose the settlement facilitator from a list of facilitators maintained by the court. The court will consider any recommendations made by the parties. The parties may present to the assigned judge a stipulated order appointing any licensed attorney or other qualified person as facilitator. Judges shall not act as facilitators in their own cases.

L. **Replacement of settlement facilitator.** By letter to the assigned judge with a copy to all parties and facilitators, any party or facilitator may request that the facilitator be replaced. The party or the facilitator

requesting replacement need not provide an explanation. Upon approval of the assigned judge, the facilitator will be replaced; the court will choose the replacement facilitator from the court's list and will complete and file an amended referral order and mail or deliver endorsed copies to all parties entitled to notice; or, the parties may present to the assigned judge a stipulated order appointing any licensed attorney or other qualified person.

M. **Compensation to settlement facilitator.** Compensation shall not be required for any settlement facilitator for a settlement conference conducted as part of a settlement week. The court may order the parties to pay reasonable compensation to the facilitator for a settlement conference not conducted as part of a settlement week. Judges shall not receive compensation for serving as settlement facilitators.